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NO. 81-318

In the Supreme Court of the United States

OCTOBER TERM, 1980

TROY WAYNE DENT,
Petitioner,

VS.

STATE OF LOUISIANA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether The Supreme Court of the State of Louisiana properly ruled that petitioner had not validly entered his plea of guilty in Juvenile Court.

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OPINION OF THE COURT BELOW

The opinion of the Supreme Court of the State of Louisiana, not reported, appears in the Appendix.

JURISDICTION OF THE SUPREME COURT

The judgment of the Supreme Court of the State of Louisiana was entered on May 28, 1981. Petitioner's timely application for a rehearing was denied on June 22, 1981. Title 28, United States Code, Section 1257(3) confers jurisdiction on this Court to review the judgment in question by Writ Of Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to The United States Constitution provides:

> Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property
>
> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness

against himself, nor be deprived of life, liberty, or property, without due process of law; not shall private property be taken for public use, without just compensation.

The Fourth Amendment to The United States Constitution provides:

> §1. Citizenship rights not to be abridged by states
>
> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

TROY WAYNE DENT was arrested and placed in juvenile custody in Jefferson Parish, Louisiana on May 17, 1980. A bill of information was filed on June 17, 1980 charging the accused in Juvenile Court with the crime of second degree murder of one Ellis I. Meyers, Jr. on May 16, 1980, a violation of Louisiana Revised Statute 14:30.1.

Defendant entered a plea of not guilty in Juvenile Court and the matter was set for trial. Prior to trial the State of Louisiana instituted proceedings to transfer the second degree murder prosecution to District Court where defendant would be prosecuted as an adult offender. The Juvenile Transfer statute in effect at the time of the offense provided for a hearing on such transfers for juveniles charged with the non capital offense of second degree murder. La. R.S. 13:1570, 1571.1 The transfer hearing was taken under advisement by the Juvenile Judge on December 17, 1980. A ruling has never been rendered.

On January 9, 1981 the Jefferson Parish District Attorney's office obtained a first degree murder indictment charging TROY WAYNE DENT in District Court with killing Ellis I. Meyers, Jr. on May 16, 1980. The second degree murder prosecution in Juvenile Court was not dismissed and the transfer hearing was never completed on the second degree murder charge. Thus, following the first degree murder indictment, TROY WAYNE DENT was being prosecuted both in Juvenile Court and District Court for homicide charges arising out of the same incident.

On January 22, 1981 TROY WAYNE DENT appeared in Juvenile Court and entered a plea of guilty as charged to second degree murder. The Juvenile

Judge would not accept the plea, indicating that he believed that the first degree murder indictment had divested the Juvenile Court of jurisdiction. The defendant brought supervisory writs to the Louisiana Supreme Court contending the Juvenile Court continued to have jurisdiction over the second degree murder charge. The Louisiana Supreme Court granted the writ and stayed all proceedings in District Court until the Juvenile Court ruled on the transfer of the second degree murder charge.

On May 12, 1981 the matter was heard in Juvenile Court. Defendant again tendered a plea of guilty as charged, which was not accepted by the Juvenile Judge. The Juvenile Judge did not rule on the transfer issue. The matter was again brought before the Louisiana Supreme Court on defendant's Writ of Certiorari. At that time the Louisiana Supreme Court ruled that defendant was not entitled to plead guilty as charged in Juvenile Court. The Louisiana Supreme Court ordered the Juvenile Court to rule on that transfer of the second degree murder charge, absent dismissal of the charge by the District Attorney. The Jefferson Parish District Attorney's office subsequently dismissed the prosecution for the capital offense of first degree murder in Jefferson Parish District Court.

ARGUMENT

Petitioner, TROY WAYNE DENT, tendered a plea of guilty to second degree murder in Juvenile Court for the Parish of Jefferson. The plea was tendered knowingly, intelligently, and with benefit of counsel. At the time the plea was entered the Juvenile Court retained jurisdiction over the second degree murder charge, as indicated by the decisions of the Louisiana Supreme Court on writ of certiorari. The plea represented "a voluntary and intelligent choice among the alternative courses of action open to defendant." *North Carolina v. Alford*, 400 U. S. 25 at 31, 91 S.Ct. 160, at p. 164 (1970); *see also Brady v. U.S.*, 397 U.S. 742, 90 S.Ct. 146 (1970).

Petitioner contends that his plea of guilty should have been accepted by the Juvenile Court. Louisiana law imposes no restrictions on entering pleas of guilty in non-capital cases, other than "determining that the plea is made voluntarily with understanding of the nature of the charge. La. C.Cr.P. Art. 556. The Louisiana Code of Juvenile Procedure requires only a determination "whether there is a factual basis for adjudication." La. C.J.P. Art. 55.

In *Lynch v. Overholser*, 369 U.S. 705, 82 S.Ct. 1063 (1962) this Court indicated that Rule 11,

Fed. Rules Criminal Procedure, denys a defendant an absolute right to have his guilty plea accepted by the court. *see also United States v. Jackson*, 390 U.S. 570, 88 S.Ct. 1209 (1968). However, Louisiana statutory law has not provided the trial court with the broad discretion found in Rule 11.

This Court has recognized that a plea tendered for the purpose of avoiding a greater sentence is valid. *North Carolina v. Alford, supra.* Petitioner submits that the refusal of the Juvenile Court to accept his plea of guilty as charged constitutes an abuse of discretion which denies him due process of law. *see i.e. United States v. Rocco*, 397 F. Supp. 655 (D.C. Mass. 1975). The Louisiana Code of Juvenile Procedure should be "liberally construed to the end that each child coming within the jurisdiction of the court shall be accorded due process." La. C.J.P. Art. 2. When the State choses to have concurrent prosecutions in both Juvenile and District Courts for the same alleged criminal activity, fundamental fairness requires that a juvenile defendant not be denied access to the court in knowingly and voluntarily entering a plea of guilty as charged.

CONCLUSION

For the reasons states above, the petition for a Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

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THE SUPREME COURT OF THE STATE OF LOUISIANA

STATE OF LOUISIANA No. 81-K-0674

VS

TROY WAYNE DENT

In Re: Troy Wayne Dent, applying for writs of Certiorari, Review, and a Stay Order, Parish of Jefferson, Number 81-104.

March 20, 1981

Granted. Trial judge is ordered to rule on transfer proceeding held in juvenile court and heard prior to first degree murder indictment. Stay of arraignment in district court is continued in force until 72 hours after juvenile judge rules in transfer proceeding.

PFC

JAD

WFM
JLD
JCW
HTL

Supreme Court of Louisiana
March 20, 1981

Clerk of Court
For the Court

STATE OF LOUISIANA
IN THE INTEREST OF
TROY W. DENT

NO. 81-K-1378

In Re: Troy W. Dent, Applying for Writs of Certiorari and Review and Stay Order, No. 52963 of Juvenile Court, Parish of Jefferson, No. 81-104, 24th Judicial District Court, Parish of Jefferson

PER CURIAM.

When this matter was previously before us in

State v. Dent, No. 81-K-0674, we ordered the case sent back to the trial court for a ruling on the transfer proceeding held in juvenile court and heard prior to the first degree murder indictment. On May 12, 1981, the trial court ruled that defendant be "transferred" to the 24th. Judicial District Court for trial under the first degree murder indictment. Such ruling is not in compliance with the order of this Court.

The writ is granted and the case returned to the trial court for a ruling in accordance with our earlier order. The trial court is to rule on the transfer motion filed by the state under the second degree murder charge, absent dismissal of that second degree murder charge in juvenile court by the district attorney.

Defendant is not entitled to plead guilty to the second degree murder charge until the trial court has acted on our order. The effect of our ruling is to permit the district attorney to elect whether to proceed on the bill of information filed in juvenile court or on the first degree murder indictment.

Stay of proceedings including arraignment in district court on first degree murder charge is continued until compliance with this order.

STATE OF LOUISIANA
VERSUS
TROY WAYNE DENT

No. 81-K-1378

Re: Troy Wayne Dent, applying for Reconsideration of Granted Writ with per curiam of May 28, 1981, Parish of Jefferson, Number 52,963.

June 22, 1981
Denied.

PFC
JAD
WFM
JLD
FAB
JCW
HTL

Supreme Court of Louisiana
June 22, 1981

Clerk of Court
For the Court